

### **REMARKS/ARGUMENTS**

The final office action of February 18, 2009 has been carefully reviewed and these remarks are responsive thereto. Claims 1, 12, 13, 32 and 37 have been amended. No new matter has been added. Reconsideration, entry of the amendments and allowance of the instant application are respectfully requested. Claims 1-7, 9, 10, 12-21, 23 and 32-39 are pending upon entry of the present amendment.

#### **Rejections under 35 U.S.C. § 103**

Claims 1-7, 9, 10, 12-21, 23 and 32-39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,958,009 to Friedrich et al. ("Friedrich") in view of WO 00/33511 to Minde et al. ("Minde"). Applicants respectfully traverse these rejections.

Amended independent claim 1 recites, *inter alia*, receiving a trigger signal at a monitoring apparatus from a remote network entity in response to a critical situation corresponding to the quality of service of the application; and in response to receiving the trigger signal, transmitting, from the monitoring apparatus, the stored network data to a remote network archive. Claim 1 further recites monitoring operation of an application by the monitoring apparatus through a network interface including: monitoring the network interface for data packets, receiving, at the monitoring apparatus, a data packet as the data packet is being transmitted between two network nodes other than the monitoring apparatus through the network interface, and filtering the received data packet. The final Office Action of February 18, 2009 concedes that Friedrich fails to teach or suggest a monitoring apparatus transmitting stored network data to a remote network archive in response to a trigger signal received from a remote network entity and instead alleges, at p. 3, that Minde cures this deficiency, citing p. 8, ll. 29-30 and p. 9 ll. 1-10. In response to the Applicants' Amendment dated May 13, 2009, the Advisory Action dated July 9, 2009 modified the rejection by asserting that the claimed features are described by the SQS 104 and network end-points of Minde. Under either interpretation, Minde fails to cure the admitted deficiencies of Friedrich.

For example, if the network end-point is considered to be the monitoring apparatus in Minde, there is no teaching or suggestion of the network end-point receiving a trigger from a

remote network entity, as discussed in Applicants' Amendment of May 13, 2009. If, on the other hand, the Office asserts that the monitoring apparatus corresponds to SQS 104 of Minde, Applicants submit that SQS 104 is not configured to monitor a network interface for data packets, receive a data packet as the data packet is being transmitted between two network nodes other than the monitoring apparatus through the network interface, and filter the received data packet. Indeed, SQS 104 merely receives data from the network end-points in Minde and does not monitor the network interface, much less receiving data packets as they are transmitted between two network nodes other than the monitoring apparatus through the network interface. *See, e.g.*, p. 6, ll. 9-22 (clearly describing that SQS 104 uses measured link parameters and quality of service measurements from network endpoints).

While Friedrich describes an analyzer 71 that filters and correlates data, analyzer 71 also does not monitor a network interface and receive data packets as they are transmitted between two network nodes (other than the monitoring apparatus) through the network interface. Even assuming, without conceding, that Minde's network end-points monitor a network interface and receive data packets therethrough, combining such functionality of Minde's network end-points with Friedrich's analyzer 71 would be nonsensical and would not result in the features as claimed in claim 1. For example, if analyzer 71 were provided with the functionality of Minde's network-endpoints, there would be no need for nodes 60 since analyzer 71 would be able to monitor the applications or network layers itself. Further, analyzer 71 would merely be sending and receiving trigger messages to and from itself (i.e., not received from a remote network entity). Accordingly, claim 1 is allowable for at least these reasons.

Claims 13, 32 and 37 recite features similar to those discussed above with respect to claim 1 and are thus allowable for at least the same reasons as claim 1.

Claims 2-7, 9, 10, 12, 14-21, 23, 33-36, 38 and 39 are dependent claims and are thus allowable for at least the same reasons as their respective base claims and further in view of the novel and non-obvious features recited therein.

**CONCLUSION**

If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit our Deposit Account No. 19-0733, accordingly.

All rejections having been addressed, Applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same.

Respectfully submitted,  
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Dated: July 17, 2009

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